

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BARBARA K. ANDERSON,
Plaintiff,
vs.
BANK OF AMERICA, N.A. MELON, et al.,
Defendants.

Case No. 2:17-cv-00103-MMD-CWH

SCREENING ORDER AND
REPORT AND
RECOMMENDATION

Presently before the court is pro se Plaintiff Barbara K. Anderson's Application to Proceed *In Forma Pauperis* (ECF No. 4), filed on January 11, 2017. Also before the court is Plaintiff's complaint (ECF No. 4-1), filed on January 11, 2017. Also before the court is Plaintiff's proposed temporary restraining order to be heard on order shortening time (ECF No. 7), filed on April 7, 2017.

I. IN FORMA PAUPERIS APPLICATION

Plaintiff has submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, Plaintiff's request to proceed *in forma pauperis* will be granted.

II. SCREENING COMPLAINT

A. Background

This case arises out of the allegedly wrongful foreclosure of Plaintiff's home located in Las Vegas, Nevada. (Compl. (ECF No. 4-1) at 2-9.) Plaintiff brings claims for violation of Nevada Revised Statutes §§ 107.520 and 107.530 against Defendants Bank of America N.A. Melon, Bank of America Home Loans, Chase Bank, Deutsche Bank National Trust Company, IMH Assets Corp., Quality Loan Servies, MTC Financial Inc. dba Trustee Corps., Platinum Realty, Steve Hawk Realestate [sic] Co., and Haines and Krieger Realty, though the court notes that Plaintiff only

1 makes specific factual allegations regarding “Bank of America.” (*Id.* at 1, 6.) Plaintiff alleges that
2 eviction proceedings were commenced on January 10, 2017, and she requests a temporary
3 restraining order to prevent her eviction. (*Id.* at 10.) Plaintiff further requests monetary damages of
4 \$244,832.86, which is the amount of equity she had acquired in her home. (*Id.* at 3, 9.)

5 Plaintiff alleges that she resides in Clark County, Nevada, and that she is a citizen of the
6 United States. (*Id.* at 4.) She does not allege the citizenship of any of the defendants. (*See id.*)

7 **B. Screening Standard**

8 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
9 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims
10 and dismiss claims that are frivolous, malicious, file to state a claim on which relief may be
11 granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
12 § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for
13 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d
14 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient factual
15 matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft v.*
16 *Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only
17 dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his
18 claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014)
19 (quoting *Iqbal*, 556 U.S. at 678).

20 In considering whether the complaint is sufficient to state a claim, all allegations of material
21 fact are taken as true and construed in the light most favorable to the plaintiff. *Wyler Summit*
22 *P'ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although
23 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must
24 provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555
25 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.* Unless it is
26 clear the complaint's deficiencies could not be cured through amendment, a pro se plaintiff should
27 be given leave to amend the complaint with notice regarding the complaint's deficiencies. *Cato v.*
28 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

1 **C. Analysis**

2 “Federal district courts are courts of limited jurisdiction, possessing only that power
3 authorized by Constitution and statute.” *K2 Am. Corp. v. Roland Oil & Gas, LLC*, 653 F.3d 1024,
4 1027 (9th Cir. 2011) (quotation omitted). Federal district courts “have original jurisdiction of all
5 civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C.
6 § 1331. Federal district courts have original jurisdiction over civil actions in diversity cases “where
7 the matter in controversy exceeds the sum or value of \$75,000” and where the matter is between
8 “citizens of different States.” 28 U.S.C. § 1332(a). “Section 1332 requires complete diversity of
9 citizenship; each of the plaintiffs must be a citizen of a different state than each of the defendants.”
10 *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001). Federal courts have the
11 jurisdiction to determine their own jurisdiction. *Special Investments, Inc. v. Aero Air, Inc.* A court
12 may raise the question of subject-matter jurisdiction *sua sponte*, and it must dismiss a case if it
13 determines it lacks subject-matter jurisdiction. *Id.*; Fed. R. Civ. P. 12(h)(3).

14 Here, Plaintiff does not invoke the court’s jurisdiction. Plaintiff alleges only Nevada state
15 law claims and therefore does not invoke the court’s federal question jurisdiction. Although she
16 states that the amount in controversy is more than \$75,000, she does not allege the citizenship of
17 any of the defendants in this action. Without allegations regarding the defendants’ citizenship, the
18 court is unable to determine whether Plaintiff invokes the court’s diversity jurisdiction. As the
19 party seeking to invoke the court’s jurisdiction, Plaintiff bears the burden of establishing
20 jurisdiction exists. *See Naffe v. Frey*, 789 F.3d 1030, 1040 (9th Cir. 2015). The court therefore
21 will recommend that this case be dismissed for lack of subject-matter jurisdiction, with leave to
22 amend.

23 If Plaintiff chooses to amend, she must include factual allegations regarding each
24 defendant’s citizenship, thereby allowing the court to determine its own jurisdiction. Additionally,
25 Plaintiff is advised all defendants must be identified in the caption of the pleading and that she
26 must specify which claims she is alleging against which defendants. Although the Federal Rules of
27 Civil Procedure adopt a flexible pleading policy, Plaintiff still must give defendants fair notice of
28 each of the claims Plaintiff is alleging against each defendant. Specifically, Plaintiffs must allege

1 facts showing how each named defendant is involved and the approximate dates of their
2 involvement.

3 Finally, Plaintiff is advised that if she files an amended complaint, the original complaint
4 (ECF No. 4-1) no longer serves any function in this case. As such, if Plaintiff files an amended
5 complaint, each claim and the involvement of each defendant must be alleged sufficiently. The
6 court cannot refer to a prior pleading or to other documents to make Plaintiff's amended complaint
7 complete. The amended complaint must be complete in and of itself without reference to prior
8 pleadings or to other documents.

9 To the extent Plaintiff requests injunctive relief in the form of a temporary restraining order,
10 the court will recommend that this request be denied given there are insufficient factual allegations
11 to determine the court's jurisdiction.

12 **III. CONCLUSION**

13 IT IS THEREFORE ORDERED that Plaintiff's Application for Leave to Proceed *In Forma*
14 *Pauperis* (ECF No. 4) is GRANTED. Plaintiff is permitted to maintain this action to conclusion
15 without prepaying fees or costs or giving security for them. This order does not extend to the
16 issuance of subpoenas at government expense.

17 IT IS FURTHER ORDERED that the Clerk of the Court must file Plaintiff's complaint
18 (ECF No. 4-1).

19 IT IS RECOMMENDED that Plaintiff's complaint be DISMISSED with leave to amend.

20 IT IS RECOMMENDED that Plaintiff's proposed temporary restraining order to be heard
21 on order shortening time (ECF No. 7) be DENIED.

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NOTICE

This report and recommendation is submitted to the United States district judge assigned to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation may file a written objection supported by points and authorities within fourteen days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

DATED: April 19, 2017

C.W. Hoffman, Jr.
United States Magistrate Judge